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04 JAN 26 PM 12:45

OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

OTHER OFFICES LOCATED IN:
MARYLAND AND MINNESOTA

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January 26, 2004

202/342-5220

*NOT ADMITTED IN DC oNOT ADMITTED IN MD ooOF COUNSEL

VIA HAND DELIVERY

Bryant L. VanBrakle, Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Room 1046
Washington, D.C. 20573

Re: Petition Nos. P3-03, P5-03, P7-03, P8-0 and P9-03

Dear Mr. VanBrakle:

Enclosed please find an original and fifteen copies of the Comments of Exel Transportation Services, Inc. in the above-referenced dockets. For the reasons stated below, we request that the Commission accept this late-filed document and make these Comments a part of the record in these proceedings.

Exel did not file these Comments in a timely manner through a combination of circumstances, including delayed communications and misunderstandings within its corporate structure, the intervention of the end of the year holidays in its decision-making process, and the respective travel schedules of the corporate officers with responsibility for making decisions about these proceedings, as well as those of internal and outside legal counsel. Given the voluminous record that already exists and the large number of other comments the Commission is reviewing acceptance of these relatively brief Comments should not prejudice the Commission or the other parties to this proceeding. Exel is not raising new issues in its Comments or submitting new arguments to which the parties opposing these Petitions will be unable to address. On the other hand, in a proceeding of this nature, it should be in the public interest for the Commission to be aware of the positions of as many significant participants in the maritime industry as possible. Exel therefore, respectfully requests that the Commission accept its Comments for filing.



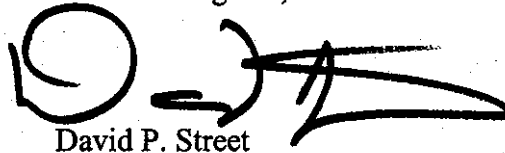
An International Association of Independent Law Firms in Major World Centers

Bryant L. VanBrakle, Secretary
Federal Maritime Commission
January 26, 2004
Page Two

I am enclosing an additional copy of these Comments which we request that your **office** date stamp and return to our office in the envelope we have provided.

Thank you for your attention.

With best regards,

A handwritten signature in black ink, consisting of a large circular loop followed by a horizontal stroke and a long, sweeping flourish.

David P. Street

Enclosures

DPS:tss
236993.1

BEFORE THE
FEDERAL MARITIME COMMISSION

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04 JAN 26 PM 12:46

PETITION OF UNITED PARCEL SERVICE,
INC. FOR EXEMPTION PURSUANT TO
SECTION 16 OF THE SHIPPING ACT OF 1984
TO PERMIT NEGOTIATION, ENTRY AND
PERFORMANCE OF SERVICE CONTRACTS

FMC Petition No. P3-03

PETITION OF NATIONAL CUSTOMS
BROKERS AND FORWARDERS
ASSOCIATION OF AMERICA, INC. FOR
TARIFF REQUIREMENTS OF THE SHIPPING
ACT OF 1984

FMC Petition No. P5-03

PETITION OF OCEAN WORLD LINES, INC.
FOR A RULEMAKING TO AMEND AND
EXPAND THE DEFINITION AND SCOPE OF
"SPECIAL CONTRACTS" TO INCLUDE ALL
OCEAN TRANSPORTATION INTERMEDIARIES

FMC Petition No. P7-03

PETITION OF BAX GLOBAL INC. FOR
RULEMAKING

FMC Petition No. P8-03

PETITION OF C.H. ROBINSON WORLDWIDE,
INC. FOR EXEMPTION
PURSUANT TO SECTION 16 OF THE
SHIPPING ACT OF 1984 TO PERMIT
NEGOTIATION, ENTRY AND PERFORMANCE
OF CONFIDENTIAL SERVICE CONTRACTS

FMC Petition No. P9-03

COMMENTS OF EXEL TRANSPORTATION SERVICES, INC.

Richard V. Merrill
Legal Counsel
Exel Transportation Services, Inc.
600 Freeport Parkway, Suite 200
Coppell, TX 75019
(972) 462-3062

Date: January 23, 2004

Exel Transportation Services, Inc. (“ETS”) appreciates the opportunity to express its views on the above-referenced petitions. ETS fully supports the goal of all of these petitions, which is to substitute a market-based contract pricing system for non-vessel-operating common carriers (“NVOCCs”) for the rigid, costly tariff-filing system that currently exists.

ETS is an FMC-licensed NVOCC (License No. 17777N) owned by Exel Plc. (“Exel”). Exel is a publicly listed company in the United Kingdom with revenues in 2002 in excess of US\$7 billion. Exel employs approximately 67,000 people in over 1,600 locations in more than 120 countries worldwide. Exel is a global leader in supply chain management and the provision of contract logistics. Its customers include over two-thirds of the world’s largest, quoted non-financial companies.

ETS’s NVOCC services are frequently provided in the context of transportation management and logistics services offered by the Exel Group. These services encompass global transportation arrangements, many of which have nothing to do with United States commerce. In this context, the requirement that ETS file tariff rates for these global customers’ shipments provides nothing of value to the customers in the way of either information or protection from discrimination. At best, tariff rate filing is simply a meaningless regulatory formality. At worst, it is a cost that might otherwise be passed through to these same customers. ETS, therefore, strongly urges the Federal Maritime Commission (“Commission”) to use its broad exemption powers under Section 16 of the Shipping Act of 1984; 46 App. U.S.C. §1715, to exempt NVOCCs from the requirements to file their rates.

It is clear, as a **matter** of law, that the Commission has full authority to accomplish this. Section 16 provides the Commission with plenary authority to exempt “any specified activity. .from any requirement of [the Shipping] Act” so long as it finds that “the exemption will not result in substantial reduction and competition or be detrimental to commerce.” (Underlining added.) *Id.* Apart from the two necessary findings that must be made by the Commission, there are no other statutory restraints

on its ability to exempt activities from the Shipping Acts requirements. Further, Congress in passing OSRA has provided the Commission with a mandate to seek further deregulation of the shipping industry. Senate Report No. 105-61, 105th Cong. 1st Sess. 30 (1997). Moreover, the stated purposes of the Shipping Act also support deregulatory initiatives such as the elimination of NVOCC tariff filing. Such an exemption would clearly reduce government intervention and regulatory costs, increase the efficiencies and economies of the transportation system, place increased reliance on the marketplace as the primary pricing mechanism for ocean transportation, and bring U.S. regulatory policies more fully in accord with international shipping practices. All of these results are specifically defined in Section 2 of the Shipping Act as the “purposes” underlying the Act itself. 46 App. U.S.C. §1701(1), (2), (4).

Tariff filing no longer has a meaningful purpose in the regulated United States ocean shipping industry as it has developed post-OSRA. As a practical matter, shippers do not refer to tariffs for pricing information. ETS’s customers simply call or email ETS for price quotes. Further, since customers must pay a subscription fee to access ETS’s tariff - - or any other tariff as far as we know - - it is clear that, as a matter of both logic and commercial good sense, no customer would be willing to pay to find out what a rate is, particularly if they are comparing rates among multiple NVOCCs. In any event, most of ETS’s rates are individually negotiated with its customers and the rate filing is simply done to satisfy statutory requirements.

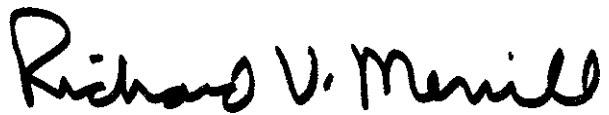
NVOCC rate filing also puts the NVOCC industry at a competitive disadvantage to the vessel operating carriers since the introduction of confidential service contracts in the Ocean Shipping Reform Act of 1998.¹ For shippers who are aware of NVOCC tariff filing requirements, their perception is that this is a negative rather than a positive particularly when the NVOCC is in competition with a vessel operator for the business.

¹ Indeed, as the Commission has recognized, the introduction of confidential service contracts has not harmed competition in the vessel operator industry. To the contrary, confidential **service** contracts are able to meet the specific commercial needs of shippers, give carriers greater pricing flexibility and enable them to package their services more efficiently. In addition, confidential contracts are able to more accurately reflect internal cost factors and individual service requirements and thereby enhance rate competition. See *OSRA Report* at 19-22, 59-60.

Of the alternatives offered to the Commission in the various petitions, ETS believes the simple elimination of mandatory tariff filing as advocated by the National Customs Brokers and Forwarders Association of America, Inc. ("NCBFAA") in Petition No. P5-03 is the best alternative. This is because it would not require the filing of NVOCC contracts with the Commission as contemplated by the other petitions. While ETS has no quarrel with the concept of allowing NVOCCs to enter into service contract-like arrangements with their customers, it does not believe there is any regulatory or competitive need for such contracts be filed with the Commission. NVOCCs simply do not have market power sufficient enough to engage in market-distorting anticompetitive activities or unfairly discriminate against shippers. Further, since NVOCCs are licensed and/or bonded, the Commission has ample jurisdiction and regulatory authority to investigate and remedy any NVOCC abuses that might occur in the context of their contracts with customers.

In sum, for the reasons stated above, ETS respectfully submits that the Commission would enhance competition, fulfill Congress's wishes, and carry out the purposes of the Shipping Act by exempting NVOCCs from mandatory tariff filing requirements.

Respectfully submitted,

A handwritten signature in black ink that reads "Richard V. Merrill". The signature is written in a cursive, flowing style.

Richard V. Merrill
Legal Counsel
Exel Transportation Services, Inc.
600 Freeport Parkway, Suite 200
Coppell, TX 75019
Tel: 972-462-3062

Date: January 23, 2004